With regard to the second of these points I see no reason to quarrel with the conclusion of the learned President that the claimant was "innocent", which I take to be a finding that the offence was committed without his knowledge, consent or connivance. Indeed, I would go further and say that having perused the proceedings both on the hearing of the claim and the criminal trial, I can find no evidence whatsoever that could cast doubt on the correctness of that conclusion.

With regard to the first point, however, it would seem that the learned President has overlooked the consideration that it was not sufficient for the claimant to shew that he was the proprietor or the registered owner of the car. What he had to shew was that he was the owner in the sense in which that word is used in section 30 which is as follows :—

"(7) In this section the owner of a conveyance means the person entitled to the possession of the same immediately before seizure."

The only evidence before the Court was that of the claimant, that of the convicted person Chan Lye Kim and that of the documents of title relating to the car. On that evidence the car was bought by Chan in March, 1952, for $5,490 of which sum $3,000 was borrowed from the Asia Union Life & Accident Assurance Society Ltd., repayable, including interest, in 15 monthly instalments of $225. A hire purchase agreement, which is not in evidence, was entered into between Chan and the Insurance Company and on 26th March, 1952, the car was registered in the name of Chan and insured with the Asia Insurance Company Ltd., in his name and the name of the Company from which he had borrowed the $3,000. Some two months later the car was sold by Chan to the claimant in satisfaction of previous debts amounting to $4,900. It was registered in the name of the claimant on 11th July, 1952, but the transfer of ownership was not intimated to the insurers until some considerable time later for the endorsement on the policy transferring Chan's interest to the claimant is dated 6th June, 1953. Presumably the change of ownership was also at some time intimated to the owners under the hire purchase agreement, because the receipt for the eleventh instalment which was due on 26th February, 1953, and was paid on 25th March, 1953, is made out in the name of the claimant though, in fact, according to the evidence this payment was made by Chan.

In November, 1952, an arrangement was come to between the claimant and Chan under which Chan acquired the use and possession of the car on condition that he paid the monthly instalments due under the hire purchase agreement. In pursuance of this arrangement, which apparently was an oral one and not reduced to writing, he took possession of the car and paid all the instalments on it, at least, until its seizure by the Customs authorities which was on 25th January, 1953, although the claimant says he had no knowledge of it until some six weeks later.

I am not saying for one moment that this story is in every respect true. It is, however, the claimant's own story and so he cannot complain if his case is decided in accordance with it. On it, it is clear that the arrangement of November, 1952, between him and Chan was a valid bailment of the car to Chan which was to subsist for at least so long as Chan paid the hire purchase instalments. It is admitted that these instalments were in fact paid by Chan, at least, down to the time of seizure, and it follows, therefore, that immediately before the seizure it was Chan and not the claimant who was entitled to possession of the car and accordingly it was Chan and not the claimant who was the owner of the car as the word "owner" is used in section 30 of the Dangerous Drugs Ordinance.

The claimant, therefore, having failed to shew that he was the owner, for the purpose of the Ordinance, his claim ought to have been dismissed. This appeal is accordingly allowed and the order in the Sessions Court for the return of the car to the claimant set aside. The claimant will pay the costs of the appeal which I assess at $100.

Appeal allowed.

R. M. VENKATACHALAM CHETTIAR & ORS.
v.
N. K. R. ARUNASALAM CHETTIAR.

[O. C. J. (Thomson, J.) October 6, 1953]

[Ipoh — Civil Suit No. 101 of 1952]

Contract — Refusal by administrator to take necessary steps to complete contract — Specific performance — Limitation — Hardship.

In 1943 the fully authorised agent of the registered proprietor of a piece of land negotiated with the plaintiffs regarding its sale. In due course, an oral agreement was entered into; the agreed purchase-money was paid in full; a transfer in accordance with the provisions of the Land Code was executed; the purchasers were let into occupation; and, after a short delay while the vendor's agent complied with the condition of sale that the land should be sold free from encumbrances, there was delivery to the purchasers of the document of title. The delay was due to the then Government authorities' delay in assessing a tax which, under the law as it then stood, had to be paid before registration could be effected. When the tax was ultimately assessed, the purchasers took immediate steps to pay it and so enable their transfer to be registered. It was incapable of registration by reason of the death in January, 1945, of the registered proprietor. The administrator of the deceased proprietor now having refused to take necessary steps to complete the contract, the plaintiffs came to the Court to ask for an order of specific performance.

The defendant resisted specified performance on two grounds: (i) that the plaintiffs' claims was barred by limitation; (ii) that there would be hardship if the Court were to exercise its discretion as it was asked. He relied on the provision in the Debtor and Creditor (Occupation Period) Ordinance contained in section 11(5) (c) the effect of which was that in any case where a difference or dispute has arisen touching the reinstatement of any security under the section, any person interested may within 18 months apply to the Court by way of originating summons "for such relief as the nature of the case requires".

Held: the provision of section 11(5) of the Debtor and Creditor (Occupation Period) Ordinance is purely ancillary to the provisions of section 11 as a whole and can have no relation to a question of contract which is not affected one way or the other by the provisions of the Ordinance.

Case referred to :—

(1) *Haji Osman bin Abu Bakar v. Saiyed Noor bin Saiyed Mohamed* (1952) M.L.J. 37.

CIVIL SUIT.

R. D. Hume and *S. P. Seenivasagam* for the plaintiffs.

Ong Huck Lim for the defendant.

Cur. Adv. Vult.

Thomson, J. : — This is really a very simple and straightforward case.

There is no controversy as to the facts. In 1943 the fully authorised agent of the registered proprietor negotiated with the plaintiffs regarding the sale of the land. In due course, an oral agreement was entered into; the agreed purchase money was paid in full; a transfer in accordance with the provisions of the Land Code was executed; the purchasers were let into occupation; and, after a short delay while the vendor's agent complied with the condition of sale that the land should be sold free from encumbrances, there was delivery to the purchasers of the document of title.

For myself, I cannot think of a contract for the sale of land less open to attack on any ground. It is true there was some subsequent delay in presenting the executed transfer for registration. That delay, however, was due not to any blameworthy laxity on the part of the purchasers but in large part to the delay of the then Government authorities in assessing a tax which, under the law as it then stood, had to be paid before registration could be effected. And when the tax was ultimately assessed, the purchasers took immediate steps to pay it and so enable their transfer to be registered. It was not, in fact, registered. No doubt the immediate cause of its non-registration was the collapse of the Japanese Government but we now know that it was in fact incapable of registration by reason of the death in January, 1945, of the registered proprietor.

And now, the administrator of the deceased proprietor having refused to take the necessary steps to complete the contract, the plaintiffs have come here to ask for an order of specific performance. As regards the obligations in the matter of the administrator I would refer to the decision of the Court of Appeal in *Haji Osman bin Abu Bakar v. Saiyed Noor bin Saiyed Mohamed*[1].

Specific performance has been resisted by the defendant on two grounds. The first is that the plaintiffs' claim is barred by limitation; the second is that there would be hardship if the Court were to exercise its discretion as it is asked.

I will deal first with the question of limitation.

It has not been argued, indeed it could not be argued, that the plaintiffs' claim is barred by anything in the Limitation Enactment itself. It is said, however, that it is barred by certain provisions in the Debtor and Creditor Ordinance, and, or, of certain provisions in the Titles to Land (Occupation Period) Ordinance.

The provision in the Debtor and Creditor Ordinance on which the defendant relies is contained in section 11(5) (c) the effect of which is that in any case where a difference or dispute has arisen touching the reinstatement of any security *under the section*, any person interested may within 18 months apply to the Court by way of originating summons "for such relief as the nature of the case requires". That provision has to be read in its ordinary grammatical sense and it seems to me so reading it that it does not derogate in any way from the ordinary provisions of the Limitation Enactment but that it can only apply in cases where a dispute has arisen regarding the reinstatement of a security under the Ordinance and where some relief is asked for as provided by the section itself. I fail to see that it can possibly apply to any matter that does not stem from such a dispute. It is true that the parties to this suit have previously been engaged in other proceedings in a dispute regarding the reinstatement of a charge. But what I am concerned with in these proceedings has no connection other than accidental with the dispute. It is a dispute which has arisen regarding the enforcement of a contract. In short the provision of section 11(5) of the Debtor and Creditor Ordinance is purely ancillary to the provisions of section 11 as a whole and can have no relation to a question of contract which is not affected one way or the other by the provisions of the Ordinance.

I then pass to the effect of the Titles to Land (Occupation Period) Ordinance. That Ordinance is intituled "An Ordinance to provide for the rectification of titles to land in the Malay States effected by transactions during the period of enemy occupation"

and it is perhaps unnecessary to observe that there can be no title to land in the Malay States independent of registration. That preamble on the face of it must be taken to govern all that follows, and I am fortified in thinking that it should govern all that follows by the consideration that the substantive provisions of the Ordinance deal entirely with registered dealings in land. It is in the light of these provisions and as a provision ancillary to them that section 33 must be read. That section commences with the statement that the Limitation Enactment shall apply to any proceedings relating to the validity of any dealing in land maintainable by virtue of the provisions of this Ordinance and proceeds to lay down that the period of limitation in regard to such proceeding shall be two years. Again there is no derogation from the general provisions of Limitation Enactment and it seems clear beyond doubt that the period of limitation of two years mentioned in the section can only apply in the case of proceedings which are maintainable by virtue of the Ordinance. The present proceeding is not a proceeding that is maintainable by virtue of the Ordinance. It is a proceeding that is maintainable by the ordinary law of contract. And therefore I must hold that section 33 has no application whatsoever.

That brings me to the question of hardship as affecting the exercise of its discretion by the Court. I will preface what I have to say by reading the statutory "Explanation" annexed to section 11 of the Specific Relief Ordinance. That reads :—

Specific performance ordered.

"Unless and until the contrary is proved the Court may presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money....."

Bearing that in mind, I now pass to section 21, the relevant portion of which reads: —

"The following are cases in which the Court may properly exercise a discretion not to decree specific performance.

.....

"II. Where the performance of a contract would involve some hardship to the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff."

It may well be that the performance of this contract would involve some hardship on the estate of the vendor which the vendor did not foresee. I am not for one moment prepared to quarrel with that. But I am not prepared to say that on the other hand non-performance would involve no such hardship on the purchaser. It may well be there are hardships on both sides. If the vendor's estate are held to his bargain, there will be hardship in the sense that as a result of circumstances beyond anyone's control the bargain has turned out worse than was anticipated. On the other hand, if it is not performed it seems to me that it will be at least a commensurate hardship on the plaintiffs to be deprived of the fruits of their bargain which may have turned out better than they had anticipated.

I am not prepared to attach any great importance to the expenditure that the defendant has incurred in litigating this and other related matters. In so far as that expenditure was increased by the ill-advised action of the present plaintiffs in the previous proceedings they have had to pay the usual penalty in the way of costs. So far as the balance is concerned, some of it, at any rate, can be attributed to the defendant's strenuous but unjustified resistance to the claim of the Mercantile Bank and the balance seems to me no greater than any unsuccessful litigant may expect to have to bear.

Bearing in mind the "Explanation" to section 11 of the Specific Relief Ordinance and bearing in mind the provisions of section 21 to the same Ordinance, I have no hesitation in exercising my discretion in the way of ordering specific performance.

There will be a declaration in the terms prayed and there will be an order for execution of transfer and delivery of documents in 21 days and the plaintiffs will have their taxed costs.

So much for the claim.

As regards the counter-claim, I think I need only say that from what I have said it follows that it should be dismissed with costs.

Claim allowed.

Re Estate of HO KEE CHEOW, a Bankrupt.

[O. C. J. (Thomson, J.) October 5, 1953]

[Ipoh — Originating Summons No. 167 of 1953]

Procedure — Bankruptcy — Application for declaration of lien and order for sale.

In 1951 Ho Kee Cheow executed a promissory note for $5,900 in favour of the applicant. At the same time, by way of collateral security, Ho deposited with the applicant the document of title in respect of a certain mining lease, and the same day the applicant lodged a caveat in respect of this mining lease and thereby constituted in his favour a valid lien in accordance with section 35A of the Mining Enactment. The money due on the promissory note was not paid and in May 1952 the applicant brought a civil suit (No. 122 of 1952) against Ho in which he asked for judgment for the amount due under the promissory note but did not ask for a declaration and ancillary relief in respect of the lien. Subsequently judgment was entered in favour of the applicant in that suit for the amount prayed and costs and Ho was adjudicated a bankrupt on the petition of another creditor and a receiving order was made in respect of his estate.

The applicant took steps to have attached in execution the same mining lease as formed the subject